IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 641 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

LAKHMAN BHIMA GADHVI - Applicant(s)
Versus
SUB DIVISIONAL MAGISTRATE & 1 - Respondent(s)

==========

Appearance :
MR RAXIT J DHOLAKIA for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 15/09/2005

ORAL JUDGMENT

1. By filing this petition under Article 226 of the Constitution of India the petitioner has prayed for quashing and setting aside the order of externment dated 29.10.2004 passed by the respondent no.1 as well as the order dated 28.04.2005 passed by the respondent no.2, dismissing the appeal preferred by the petitioner against the said order of the competent authority.

2. Being aggrieved by and dissatisfied with the said order of externment dated 29.10.2004, passed by the respondent no.1 in exercise of powers under Section 56 (a) and (b) of the Bombay Police Act, 1951, an appeal was preferred under Section 60 of the Act before

the Secretary, Home Department, Gandhinagar which was also rejected vide order dated 28.04.2005 in exercise of powers under Section 60 (3) of the said Act.

3. Heard Shri Rakshit Dholakia learned advocate for the petitioner and Mrs. Hansa B. Punani, learned Addl. Public Prosecutor for the reaspondents.

4. It is submitted that there is a gross delay in issuing the show cause notice dated 16.10.2004, the last offence came to be registered against the petitioner at Khambhaliya Police Station on 11.03.2002. That after since after lapse of 2 years, during which no offence came to be registered against the petitioner nor any statement of witnesses referred to any untoward incident or any criminal activities by the petitioner for the said period. It is further submitted that the

authority has also not supplied the gist of relevant statements of the witnesses after withholding the identity of the witnesses which have deprived the externee of his right to file substantive reply and therefore, the action of the respondent authority is violated of principles of natural justice and fair play and therefore, the petition is required to be allowed by quashing the impugned order.

5. Learned advocate for the petitioner has also relied upon the decision reported 2002 GLR 1158 and 1989 (2) GLR 1429 in support of above submissions.

6. On the other hand Mrs. Hansa B. Punani, learned Addl. Public Prosecutor has opposed the petition and submitted that the show cause notice was issued pursuant to the criminal case which was registered and delay in issuance of show cause notice from the last date of

registration of offence cannot be said to be fatal to the order of externment. Therefore, it was submitted that no interference is called for by this Court in exercise of powers under Article 227 of the Constitution of India.

7. Upon perusal of the relevant provisions of Bombay Police Act, 1951 and particularly sections 56, 57, 59 and 60 dealt with externment proceedings which includes issuance of show cause notice passing of the order by the externment authority, appeal if any to be preferred by the externee and the decision on appeal by the appellate authority in exercise of powers under Section 60(3) of the Act. In the present case, it is evident from the record that last offence which was registered in the month of March, 2002 and show cause notice issued on 16.03.2004 and during that intervening period no criminal or offensive act is alleged to have been committed by the

externee. The purpose of passing the order of externment is to see that nefarious and incriminating activities of the externee can be controlled by ousting such an externee from the area operation. In the present case, the concerned authority has relied upon on stale incidents of March, 2002 and thereafter after a lapse of 2 years the order of externment was passed in the month of April, 2004. This amounts arbitrary exercise of powers and unreasonable exercise of powers, depriving the citizen of right to move freely in accordance with the fundamental right guaranteed under Article 19 and 21 of the Constitution of India.

Even the second ground on which the order of externment can be quashed and set aside is non-suppliance of gist of statements of witnesses, even without disclosing the names, the time and the place of such alleged illegal activities so that the externee can

explain in it proper perspective or leave the evidence in his defense, is not followed therefore, the decision reported in 1989 (2) GLR 1429 is squarely applicable which reads as under:-

> “9. Shri Gupta has also stated in his affidavit that the Inspector, Vadi Police Station, Vadodara, had recorded statements of 11 persons in confidence. He further stated that he had applied mind on the relevant material of the case produced before him, which includes the statement of the persons recorded by the police. It is not stated in the notice that the statements of the witnesses were recorded by the police. If at all any such statements would have been recorded and intended to be relied upon, at least, reference of the statements, without disclosing the names, with the time and place of such alleged illegal activities of the petitioner should have been made in the notice so that the petitioner could have got an opportunity to explain the said circumstances to

> lead evidence. Without giving him an opportunity to even letting the petitioner know that statements of 11 persons. It is true that general allegations are only required to be made in the notice, but when statements are relied upon for the externment order at least, the person to be affected by such order should be given an opportunity to explain at least the general nature of allegations to explain the circumstances, which weighed considerably with the Externing Authority, and therefore, also the order vitiates."

8. In view of the decision reported above, I am of the opinion that the order of externment dated 29.10.2004 as confirmed by the appellate authority vide its order dated 28.04.2005 are required to be quashed and set aside as there is also delay in issuance of show cause notice from the last registered offence in the month of March 2002 registered at Khambhaliya Police

Station and during the said intervening period of 2 years no illegal activities have been attributed to the externee and to that extent the exercise of powers by the authority under Section 56(a) and (b) of the Bombay Police Act, 1951 is arbitrary, illegal, unreasonable and violative of article 14, 19 and 21 of the Constitution of India and the order of externment required to be quashed and set aside. That non-supply of the gist of the statements of the witnesses and specifically the dates with time and place about the incident of alleged activities of the externee are also violative of fair play and principles of natural justice and to that extent also the order of externment dated 29.10.2004 as confirmed by the appellate authority vide its order dated 28.04.2005 are held to be arbitrary, illegal, unreasonable and violative of Articles 19 and 21 of the Constitution of India hence the same are ordered to be quashed

and set aside.

9. Rule is made absolute to that extent accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

amit